

Amendment and Response

Applicant: Charles D. Ray

Serial No.: 09/807,318

Filed: October 16, 2000

Docket No.: 2132 (R293.102.102)

Title: INTERBODY DEVICE AND METHOD FOR TREATMENT OF OSTEOPOROTIC VERTEBRAL COLLAPSE

REMARKS

This Amendment is responsive to the Office Action mailed March 29, 2004. In that Office Action, the Examiner rejected claims 1 and 10 under 35 U.S.C. §102(e) as being anticipated by Reiley et al., U.S. Patent No. 6,248,110 ("Reiley"). Claims 2-9 and 11-13 were rejected under 35 U.S.C. §103(a) as being unpatentable over Reiley in view of Scribner et al., U.S. Patent No. 6,241,734 ("Scribner"). With this Response, claims 1, 8, and 10 have been amended; claims 14-16 have been added; and claim 7 has been cancelled. Claims 1-6, and 8-16 remain pending in the application and are presented for consideration and allowance.

35 U.S.C. §103 Rejections

Claim 1 has been amended to incorporate the limitations of now-cancelled claim 7. Though claim 7 was rejected as being obvious over Reiley in view of Scribner, neither reference teaches or suggests an expandable membrane releasably attached to a catheter body member, nor has the Examiner cited any such teachings. For at least this reason, it is respectfully submitted that amended claim 1 is allowable over the cited references.

Claims 2-6, 8, and 9 each depend from amended claim 1. As previously described, amended claim 1 is allowable over the cited references. As such, claims 2-6, 8, and 9 are similarly allowable. Further, it is respectfully noted that the Examiner has not indicated how Reiley or Scribner teach or suggest the limitations of claims 5 and 8.

Claim 10 relates to a method for reforming a collapsed vertebra of a patient, and has been amended to recite that the patient is suspended in a chest supporting harness. Support for this language is found, for example, at page 16, lines 3-7. Neither Reiley nor Scribner satisfy at least this limitation. Thus, it is respectfully submitted that amended claim 10 is allowable over the cited references. Further, claims 11-13 depend from amended claim 10 and thus are similarly allowable.

Newly presented claim 14 depends from amended claim 10 and thus, for at least the reasons previously described, is allowable. Further, claim 14 recites dispensing a hardening material into the expandable membrane; uncoupling the expandable membrane from the catheter

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body; and removing the catheter body from the patient such that the expandable membrane remains between the vertebral body portions. Support for this language is found, for example, at page 18, lines 5-8. Reiley and Scribner are limited to removing the expandable membrane from the vertebral body position, and do not contemplate filling the expandable membrane with a hardening material. For at least these reasons, then, newly presented claim 14 recites patentably distinct subject matter.

Newly presented claim 15 depends from claim 1 and thus, for at least the reasons previously described, is allowable over the cited references. In addition, claim 15 recites that at least a portion of the expandable membrane is formed of a biodegradable material. Support for this language is found, for example, at page 13, line 19 – page 14, line 6. The cited references fail to teach or suggest this limitation such that newly presented claim 15 recites additionally allowable subject matter.

Claim 16 depends from claim 15 and thus, for the reasons previously described, is allowable. Further, claim 16 recites that an entirety of the expandable membrane is biodegradable. Support for this language is found, for example, at page 13, line 19 – page 14, line 6. Neither Reiley nor Scribner teach or suggest at least this limitation. Thus, it is respectfully submitted that claim 16 recites additionally allowable subject matter.

Allowable Subject Matter

In light of the above, Applicant believes independent claims 1 and 10, and the claims depending therefrom, are in condition for allowance. Allowance of these claims is respectfully requested.

CONCLUSION

No fees are required under 37 C.F.R. 1.16(b)(c). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 50-0471.

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The Examiner is invited to contact the Applicant's Representative at the below-listed telephone number if there are any questions regarding this response.

Respectfully submitted,

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CERTIFICATE UNDER 37 C.F.R. 1.8:

The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 24th day of August, 2004.

By 

Name: Timothy A. Czaja